



4000-01-U

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education

ACTION: Notice of decision.

SUMMARY: The Department of Education (Department) gives notice that on August 29, 2011, an arbitration panel rendered a decision in the matter of the Oregon Commission for the Blind v. United States Department of Veterans Affairs, Case no. R-S/09-2. This panel was convened by the Department under the Randolph-Sheppard Act (Act) after the Department received a complaint filed by the Oregon Commission for the Blind.

FOR FURTHER INFORMATION CONTACT: You can obtain a copy of the full text of the arbitration panel decision from Mary Yang, U.S. Department of Education, 400 Maryland Avenue, SW., room 5162, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-6327. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print,

audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Act, 20 U.S.C. 107d-2(c), the Secretary publishes in the Federal Register a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

The Oregon Commission for the Blind (Complainant) alleged the United States Department of Veterans Affairs (DVA) violated the Act and its implementing regulations in 34 CFR part 395 when it denied Complainant's February 5, 2009, permit application to operate vending machines at the Southern Oregon Rehabilitation Center and Clinic (Clinic) in White City, Oregon.

On September 28, 2009, Complainant contacted the DVA requesting that it process Complainant's permit application. On December 9, 2009, DVA's Regional Counsel denied Complainant's request to process the permit application.

The DVA's position was that it properly denied the Complainant's application for two reasons. One, the Clinic did not support a vending facility because of its scattered buildings, and two, the DVA was not obligated to ensure the

Clinic supported a vending facility. Specifically, the DVA's position was that the regulations requiring a satisfactory site or sites for the location and operation of a vending facility by a blind vendor under certain circumstances did not apply to the Clinic because the DVA has operated the clinic since 1949 and its buildings contain fewer than 15,000 square feet of interior space and house less than 100 Federal employees during normal working hours.

Complainant filed a request for Federal arbitration with the Department. A hearing on this matter was held on April 13 and 14, 2011. The issue as determined by the arbitration panel was "whether the Department of Veterans Affairs violated the Randolph-Sheppard Act by denying the request to process the permit application of the Oregon Commission for the Blind for a permit to operate the Clinic vending machines."

Arbitration Panel Decision

After reviewing all of the testimony and evidence, the panel found that the Clinic is a single facility and that its vending machines are part and parcel of that facility. The panel noted that the parties' differing interpretations stem from the fact that regulations in 34 CFR, part 395, do not specifically address a State licensing agency's (SLA's)

permit application covering a building that was not new or renovated after January 1, 1975. The panel determined that, in cases of statutory ambiguity, "regulations must be interpreted in a way that will serve the objectives of the statute and reasonably be consistent with the statute."

The panel first determined that the purpose of the Act clearly is to enlarge economic opportunities of the blind. The panel then recognized that section 395.31 of the regulations attempts to implement this statutory purpose through the satisfactory site requirements. The panel also considered the last sentence in 395.31(e) to be relevant, although it did not apply directly to the facts in this case. This section provides that nothing in section 395.31 precludes an SLA and a Federal property managing department from agreeing to a vending facility even if the site does not meet minimum requirements under the satisfactory site provisions.

The panel found that the DVA's position of strictly interpreting the regulations "contradicts section 107 [of the Act] by restricting and thwarting opportunities for the blind." Accordingly, the panel found that: 1) the priority provisions of the Randolph-Sheppard Act applied to the Clinic; 2) The DVA improperly denied Complainant's application for a permit to operate vending machines at the

Clinic; and 3) the existing Clinic vending machines are not exempted from the Award and Order.

One panel member dissented. This panel member found that the Clinic buildings constructed or substantially modified after January 1, 1975, are exempt from the Randolph-Sheppard Act by application of the minimum standards of 34 CFR 395.31(d). This panel member also determined that the remaining Clinic buildings existing on January 1, 1975, that were not substantially renovated since that date are exempt from the priority provisions of the Act. Thus, the DVA was justified in declining Complainant's application for a permit to place vending machines at the Clinic.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

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Dated: January 24, 2012

Alexa Posny,
Assistant Secretary
for Special Education and
Rehabilitative Services.

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